

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 159

November 29, 1957

FOREIGN CORPORATIONS: INSURANCE COMPANIES: INCOME FROM LOANS ON CALIFORNIA REAL ESTATE

Syllabus:

Interest income of foreign insurance companies not "doing business" in this State from loans on California real estate is not subject to taxation under the Bank and Corporation Tax Law.

Certain insurance companies have qualified to do business within California, however, they have not engaged in the insurance business. They have made loans on California real estate through independent mortgage loan brokerage firms and receive interest income from such loans. Advice is requested whether the companies are subject to tax under the Bank and Corporation Tax Law.

Section 14 4/5 of Article XIII of the State Constitution levies a gross premium tax on insurance companies doing business in California. With certain exceptions the gross premium tax is "in lieu" of all other state taxes. In Edward Brown and Sons v McColgan, 53 CA2d 504, the court held an insurance agent subject to the Franchise Tax Law, on the theory that since he had paid no "in lieu" taxes, the Constitutional provision gave him no immunity from our taxes. Since the instant insurance companies do not conduct any insurance business within the State, they are not entitled to the immunity of the Constitution provision. Under Chapter 2 of the Bank and Corporation Tax Law there must be active representation within the State by an employee or agent before a foreign corporation is considered to be "doing business" in this State and the activities of the independent mortgage loan brokers are not such to satisfy the "doing business test". Under Regulation 23040(a) intangible assets may be considered as having their business situs in California and therefore subject to taxation under Chapter 3 of the Bank and Corporation Tax Law. However, since the insurance companies are not "doing business" within this State, their interest income from intangible assets located here would not fall under the provisions of Regulation 23040(a) and therefore would not be subject to taxation under Chapter 3 of the Bank and Corporation Tax Law.

Therefore, it must be concluded that although there is no constitutional limitation on taxing these companies, they are not subject to taxation under the Bank and Tax Law.